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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIFTH APPELLATE DISTRICT

In re T.Z. et al., Persons Coming Under the
Juvenile Court Law.

FRESNO COUNTY DEPARTMENT OF
CHILDREN AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

T.Z.,

Defendant and Appellant.

F059375

(Super. Ct. Nos. 09CEJ300226-1,
09CEJ300226-2, 09CEJ300226-3,
09CEJ300226-4)

OPINION

APPEAL from a judgment of the Superior Court of Fresno County. Jane A.
Cardoza, Judge.

Daniel G. Rooney, under appointment by the Court of Appeal, for Defendant and
Appellant.

Kevin B. Briggs, County Counsel, and William G. Smith, Deputy County
Counsel, for Plaintiff and Respondent.

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Father T.Z. appeals from the juvenile court's jurisdictional findings and dispositional orders regarding his four children. We will affirm.

BACKGROUND

On September 15, 2009, at about 11:15 p.m., police officers observed father, who was on felony probation, apparently selling marijuana in an alley outside his garage. The area smelled strongly of marijuana. When father noticed the officers, he wrapped a large bag of marijuana in his shirt and hid it in the garage. Inside the garage, the officers found a table covered with remnants of marijuana and a bucket containing marijuana stems. Father admitted having one-quarter pound of marijuana in the garage, which was the source of the strong odor of marijuana. The officers found a "couple pounds" of marijuana in the garage. After they placed father in the patrol vehicle, mother came into the garage and explained that the marijuana was hers and she was going to sell it to make some money.

When the officers searched the residence, they noticed a strong odor of marijuana throughout the home, including the living room, where four children (two sets of twins, ages one and three) were sleeping. As an officer approached a bedroom, he noticed two 12-inch-long dry marijuana branches hanging upside down from a bookshelf. Father and mother were arrested on child endangerment and drug charges. The officers called the Department of Children and Family Services (the department), which filed a Welfare and Institutions Code section 300 petition¹ and placed the children in foster care.

At the jail, father told a social worker that he did not know where the marijuana came from; someone had dropped it off at his home. Neither he nor mother sold drugs. He did not use marijuana, but did use methamphetamine and he was on felony probation

¹ All statutory references are to the Welfare and Institutions Code unless otherwise noted.

for possession of methamphetamine. Father's criminal history dated from 1994 and included convictions for possession of drugs and for possession of drugs for sale.

At the October 28, 2009 jurisdictional hearing, the court found true the petition's allegations b-1, b-2, and b-3, as amended in the mediation agreement. Under allegation b-1, the court found that mother failed to provide adequate care, supervision and protection to the children because she engaged in drug and criminal activity while her children were in her care and custody. The allegation was based on the substantial amount of marijuana found in the residence where the children lived. In allegation b-2, the court found the same true as to father. Under allegation b-3, the court found that father had a methamphetamine and marijuana abuse problem that negatively affected his ability to provide regular care, supervision, and protection to the children, and that placed the children, who were young and required a sober and stable care provider, at substantial risk for abuse or neglect. The allegation was based on father's history of arrests for possession of a controlled substance and his admitted methamphetamine use off and on for the past 15 years.

Between September 21, 2009 and January 18, 2010, father's record for drug testing was poor. On four occasions, September 23, 2009, November 18, 2009, November 19, 2009, and January 4, 2010, he tested positive for methamphetamine. On two occasions, December 7, 2009 and December 9, 2009, he tested negative. On the remaining 17 occasions, he either refused to test or failed to show up for the test.

On January 11, 2010, police responded to a reported party in mother and father's garage. Father and mother were taken into custody, and father was arrested for being under the influence of a controlled substance, being in possession of burglary tools, and violating probation.

At the January 22, 2010 dispositional hearing, the department recommended granting reunification services to mother, but denying them to father pursuant to section 361.5, subdivision (b)(13).² Although the visits were going well and there was a bond between father and the children, father lacked “insight into his family’s needs as evidenced by his continued use of drugs, which was the reason he [did] not have his oldest son [from another relationship] in his care and custody.” Father had attended treatment programs, but failed to apply what he learned to his daily life. His continued possession and use of controlled substances placed the children “at great risk of suffering serious injury or illness.” The department concluded that father had made minimal progress and his prognosis for successful reunification was poor.

Father submitted on the department’s reports, agreed to testing as a condition of visitation, and requested that the current visitation schedule be maintained.

The juvenile court removed the children from mother and father’s custody, denied reunification services to father, and reduced his visitation to twice per month.

DISCUSSION

I. Jurisdictional Findings

Father contends insufficient evidence supported the jurisdictional findings because the department did not show that his drug use caused harm or a risk of harm to the children. We disagree.

² Section 361.5, subdivision (b)(13) provides: “Reunification services need not be provided to a parent or guardian described in this subdivision when the court finds, by clear and convincing evidence, any of the following: [¶] ... [¶] (13) That the parent or guardian of the child has a history of extensive, abusive, and chronic use of drugs or alcohol and has resisted prior court-ordered treatment for this problem during a three-year period immediately prior to the filing of the petition that brought that child to the court’s attention, or has failed or refused to comply with a program of drug or alcohol treatment described in the case plan required by Section 358.1 on at least two prior occasions, even though the programs identified were available and accessible.”

“In a challenge to the sufficiency of the evidence to support a jurisdictional finding, the issue is whether there is evidence, contradicted or uncontradicted, to support the finding. In making that determination, the reviewing court reviews the record in the light most favorable to the challenged order, resolving conflicts in the evidence in favor of that order, and giving the evidence reasonable inferences. Weighing evidence, assessing credibility, and resolving conflicts in evidence and in the inferences to be drawn from evidence are the domain of the trial court, not the reviewing court. Evidence from a single witness, even a party, can be sufficient to support the trial court’s findings. [Citations.]” (*In re Alexis E.* (2009) 171 Cal.App.4th 438, 450-451; see also *In re Brison C.* (2000) 81 Cal.App.4th 1373, 1378-1379.) “When a dependency petition alleges multiple grounds for its assertion that a minor comes within the dependency court’s jurisdiction, a reviewing court can affirm the juvenile court’s finding of jurisdiction over the minor if any one of the statutory bases for jurisdiction that are enumerated in the petition is supported by substantial evidence. In such a case, the reviewing court need not consider whether any or all of the other alleged statutory grounds for jurisdiction are supported by the evidence.” (*In re Alexis E., supra*, at p. 451.)

Section 300, subdivision (b) provides a basis for juvenile court jurisdiction if there is a substantial risk a child will suffer serious physical harm or illness “as a result of the failure or inability of his or her parent ... to adequately supervise or protect the child ... or by the inability of the parent ... to provide regular care for the child due to the parent’s ... substance abuse.” “A jurisdictional finding under section 300, subdivision (b) requires: “(1) neglectful conduct by the parent in one of the specified forms; (2) causation; and (3) ‘serious physical harm or illness’ to the child, or a ‘substantial risk’ of such harm or illness.” [Citation.]’ [Citations.]” (*In re James R.* (2009) 176 Cal.App.4th 129, 135.) The standard of proof at a jurisdictional hearing is a preponderance of the evidence. (§ 355, subd. (a); Cal. Rules of Court, rule 5.684(f); *In re*

J.K. (2009) 174 Cal.App.4th 1426, 1432.) “While evidence of past conduct may be probative of current conditions, the question under section 300 is whether circumstances *at the time of the hearing* subject the minor to the defined risk of harm.” (*In re Rocco M.* (1991) 1 Cal.App.4th 814, 824.)

The purpose of the juvenile court law is to provide “maximum safety and protection for children” who are being harmed or who are at risk of being harmed. (§ 300.2.) “The provision of a home environment free from the negative effects of substance abuse is a necessary condition for the safety, protection and physical and emotional well-being of the child.” (*Ibid.*) Marijuana is a hallucinogenic substance. (Health & Saf. Code, § 11054, subd. (d)(13).) “There is a risk to ... children of the negative effects of secondhand marijuana smoke. [¶] ... [U]se of marijuana near others can have a negative effect on them.” (*In re Alexis E., supra*, 171 Cal.App.4th at p. 452.)

Here, there was evidence that father, who had a history of drug use and sales, kept marijuana in the residence, accessible to the children, and the room where the children were found sleeping had a strong odor of marijuana. This exposure to the drug posed a risk of physical harm to the children. Furthermore, father’s involvement in criminal drug sales exposed the children to a dangerous lifestyle. This evidence was more than sufficient to support allegation b-2, and thus we need not address any other allegations. Substantial evidence supported the juvenile court’s jurisdictional finding.

II. Conflict in the Record

Father argues that the court erroneously denied him reunification services pursuant to section 361.5, subdivision (b)(1), applicable when the whereabouts of the parent is unknown—and inapplicable to father.³ Father’s argument is based on a single reference

³ Section 361.5, subdivision (b)(1) provides: “Reunification services need not be provided to a parent or guardian described in this subdivision when the court finds, by clear and convincing evidence, any of the following: [¶] (1) That the whereabouts of the parent or guardian is unknown. A finding pursuant to this paragraph shall be supported

to section 361.5, subdivision (b)(1) in the reporter's transcript. The essence of his claim is that we are bound by the single reference to section 361.5, subdivision (b)(1) in the reporter's transcript, in spite of the repeated references to section 361.5, subdivision (b)(13) in various documents contained in the clerk's transcript, and at least one reference in the reporter's transcript when county counsel referred to the department's recommendation to deny services to father pursuant to section 361.5, subdivision (b)(13). This argument borders on the absurd.

As the People note, we do not apply this conflict rule so mechanically. “‘It may be said ... as a general rule that when, as in this case, the record is in conflict it will be harmonized if possible; but where this is not possible that part of the record will prevail, which, because of its origin and nature or otherwise, is entitled to greater credence [citation]. Therefore whether the recitals in the clerk's minutes should prevail as against contrary statements in the reporter's transcript, *must depend upon the circumstances of each particular case.*’ [Citations.]” (*People v. Smith* (1983) 33 Cal.3d 596, 599, italics added.)

The circumstances of this particular case demonstrate that the statutory reference in the reporter's transcript was an obvious error, either by the court or the reporter. The remainder of the record is replete with references to section 361.5, subdivision (b)(13). And, as defendant agrees, section 361.5, subdivision (b)(1) clearly had no application to the case. Here, the one reference to section 361.5, subdivision (b)(1) can be disregarded.

III. Visitation

Lastly, father contends the juvenile court abused its discretion when, after denying him reunification services, it reduced his visitation from twice per week to twice per

by an affidavit or by proof that a reasonably diligent search has failed to locate the parent or guardian. The posting or publication of notices is not required in that search.”

month. He points out that his relationship with the children was strong and beneficial to them. We see no abuse of discretion.

When reunification services are denied, the juvenile court “*may* continue to permit the parent to visit the child unless it finds that visitation would be detrimental to the child.” (§ 361.5, subd. (f), *italics added.*) “[V]isitation is not integral to the overall plan when the parent is not participating in the reunification efforts. This reality is reflected in the permissive language of section 361.5, subdivision (f).” (*In re J.N.* (2006) 138 Cal.App.4th 450, 458-459, fn. omitted.) “Further, ... section 361.5, subdivision (f) does not dictate a particular standard the juvenile court must apply when exercising its discretion to permit or deny visitation between a child and a parent who has not been receiving reunification services. The Legislature instead has left this determination to the court’s discretion for the narrow group of parents described in section 361.5, subdivision (f), who have been denied reunification services at the outset.” (*Id.* at p. 459.)

Thus, after denying reunification services, the juvenile court has the authority to deny visitation entirely, for any reason, as long as the reason is not arbitrary, capricious, or otherwise an abuse of the court’s discretion. If, however, the court makes a finding that visitation would be detrimental to the child, then it is *required* to deny visitation. If the court has the discretion to deny visitation entirely, it certainly has discretion to alter its terms or frequency.

We review a visitation order made in a dependency proceeding for abuse of discretion and will not disturb the juvenile court’s decision unless an abuse of discretion clearly is shown. (*In re Stephanie M.* (1994) 7 Cal.4th 295, 318-319.)

In this case, we cannot say the visitation order constituted an abuse of discretion. Although father was bonded with the children and their visits went well, he failed to demonstrate significant improvement that would justify the liberal visitation he had

enjoyed to this point. Given the denial of services to father, the reduction in visitation was reasonable.

DISPOSITION

The juvenile court's findings and orders are affirmed.

Kane, J.

WE CONCUR:

Cornell, Acting P.J.

Hill, J.